

MINUTES OF THE COMMISSION FOR HUMAN RIGHTS

December 15, 2005

A regular meeting of the Commission for Human Rights was held in the agency conference room on Thursday, December 15, 2005. Present at the meeting were Commissioners Alberto Cardona, Camille Vella-Wilkinson and Iraida Williams,. Absent were Alton W. Wiley, Jr., Dr. John B Susa, Jean Stover and Randolph Lowman. Commissioner Vella-Wilkinson, acting chairperson, called the meeting to order at 11:30 a.m.

A motion to approve the October 27, 2005, minutes was made by Commissioner Camille Vella-Wilkinson. The motion was seconded by Commissioner Williams and carried.

Status Report: Michael D. Évora, Executive Director-

A written report was handed out. All new information will be in bold print.

Case Production Report - Attached

AGED CASE Report - Attached

Outreach Report - Attached

STATUS REPORT - COMMISSIONERS-

GENERAL STATUS: No report at this time

OUTREACH : Commissioner Vella-Wilkinson reported that she was interviewed by Community College of RI business students regarding sexual harassment.

Commissioner Meeting -2- DECEMBER 15, 2005

STATUS REPORT - LEGAL COUNSEL, Cynthia M. Hiatt and Francis Gaschen

LITIGATION: Report attached.

LEGISLATION: No Discussion at this time.

REGULATIONS: No Discussion at this time.

HEARING SCHEDULE: Discussed

DECISIONS: No Discussion at this time.

The meeting adjourned at 11:45 a.m. The next regular meeting of the Commission is scheduled for Thursday, January 26, 2005 at 9:30 am.

Respectfully Submitted,

**Michael D. Évora
Executive Director**

**Notes taken by: B. Ross
EXECUTIVE DIRECTOR'S
REPORT TO COMMISSIONERS
DECEMBER 15, 2005**

I. BUDGET

On September 13, 2005, the Commission submitted its annual budget request (FY 2006 Revised and FY 2007 Proposed) to the Governor. The salient details are:

	FY 2005	FY 2006	FY 2007
	(Actual)	(Revised)	(Request)
State	990,560	1,005,908	1,058,230
Fed.	107,662	312,482	324,862
Total	1,098,222	1,318,390	1,383,092

To review/obtain a full copy of the request, please see either me or Betsy Ross.

Theo Toe, Budget Analyst, contacted me on December 1. He advised that the Commission's "allocable share" of the state's \$77.4 million projected operating deficiency for FY 06 is approximately \$40,000. Mr. Toe said that we can account for this "share" by shifting \$40K out of General Revenue (state) and into our federal expenditures, adding, "There shouldn't be any major fiscal impact [to the Commission]."

II. FEDERAL CONTRACTS

EEOC – As of 12/14/05, according to EEOC Project Director Marlene Toribio, we have closed 40 co-filed cases, We do not yet have the FY 2006 contract. (The FY 2005 contract was for 328 cases.)

HUD – For FY 06, as of 12/13/05, according to HUD Project Director Angela Lovegrove, we have taken in 21 new housing charges, 14 of which are co-filed with HUD. Within this same time period, we have processed 17 housing charges, 9 of which were co-filed with HUD.

III. PERSONNEL

No changes in status.

IV. OUTREACH – Refer to attached report.

V. GENERAL STATUS

●Meetings with staff members – I continue to meet with individual investigative staff members on a monthly basis to monitor

case production.

●Case Closures – Refer to attached report.

●Aged Cases – Refer to attached report. Progress continues to be made on decreasing the aged caseload. The Commission successfully reduced the aged caseload was reduced by 77% in FY 2005 (from 26 to 6 cases).

●Commissioner (Re)Appointments – No new information to report.

●Overall Case Inventory – The Commission had over 1000 cases in its inventory at the end of FY 98. That number has steadily decreased. The Commission ended FY 2004 with 602 cases in inventory. We ended FY 05 with 382 cases in inventory and, as of 12/14/05, had 363 cases in inventory.

●Meetings with EEOC:

1. On November 16, Joe Alvarado (NY Regional Office, EEOC) came to the Commission to meet with me and selected staff members. Two goals for this fiscal year were conveyed to the Commission: 1) EEOC/RICHR co-sponsored outreach at a local high school to be held some time in the Spring; 2) targeted poster campaign to educate young entrants into the workforce on their rights, to be coordinated

with RIPTA.

RIPTA has agreed to participate in the poster campaign and to cover the expense of the printing. A formal “unveiling” of the poster, to be displayed in all RIPTA buses, will be scheduled for some time in late Winter. The EEOC Vice-Chairperson is planning to attend.

2. On December 12, 2005, Electra Yourke, Enforcement Supervisor at the EEOC NY District Office, visited the Commission to review preselected case files for possible class action lawsuits. (The Boston/NY EEOC region attorneys file about 25 such cases each year in district courts.) At the Commission’s request, Ms. Yourke plans to visit the Commission again, possibly in January 2006, to conduct a training of intake, investigative and legal staff on how to identify potential class action cases.

●Mediation – A goal for this fiscal year is the implementation of an Early Intervention Mediation Program here at the Commission. A committee has been formed to identify a strategy for implementation and will report on progress at the November staff meeting. Frank Gaschen, Nick Palazzo, Tina Christy and Susan Gardner are on the committee.

• Miscellaneous

-The Commission has been selected as one of three agencies to conduct a study of “maximum target caseloads” with FY 2006 as the

study period. Cynthia Hiatt, Frank Gaschen, Susan Pracht and I are participating in monthly meetings with Union officials to facilitate the study, which includes a survey of the New England regional FEPAs.

-The Performance Audit by the Department of Admin./Bureau of Audits has been completed. Mary Murphy, who conducted the audit, has indicated that she is in the process of finalizing the report based on input from her superiors. We should receive a draft shortly.

-Two grievances were filed against the Commission related to 1) interpreting services provided by staff, and 2) payment of Union dues by temporary employees (Jay Flanders and Susan Pracht). Both grievances were denied after a third-level hearing (held on October 19, 2004). The Union has appealed the denial of the second grievance; arbitration is scheduled to be held in March 2006.

-FY 2005 Annual Report: The editing process has been completed. Hopefully, Dr. Susa will be able to review and sign the letter transmitting the report to the Governor some time before year's end. The report will then be sent out for printing.

Respectfully submitted,

Michael D. Évora

Executive Director

Attachments

To: Commissioners

From: Cynthia Hiatt and Frank Gaschen, Legal Counsels

Re: Litigation

Date: December 15, 2005

Recent developments are in bold.

American Legion v. John B. Susa, Camille Vella-Wilkinson and Jean Stover in their official capacities and Cote, Stifano and Potter

The respondent appealed the decision in favor of complainants and moved for a stay of the Commission decision and order. The parties agreed to a consent order that the enforcement of the Commission order would be stayed during appeal and that respondent would not dispose of its assets during appeal. The decision on attorney's fees issued. The Commission filed the administrative record with the court. The respondent's brief was received by the Commission on July 25. The complainants' brief was received by the Commission on August 1, 2005. The Commission brief was filed in mid-August. The case has been assigned to Judge Lanphear. Judge Lanphear issued a long, well-researched opinion upholding the Commission's decision. An order has entered.

Babbitt v. Crescent Park Manor, et al.

The Commission filed a motion to intervene as a party plaintiff in this case. Plaintiff's counsel had no objection to the motion. The motion was granted. Discovery will commence soon.

Gaffney v Town of Cumberland et al

The respondent appealed the Commission decision. The parties and the Commission filed briefs. The case was assigned to Judge Savage. Judge Savage held a status conference with the attorneys, including Commission counsel, on January 21. Judge Savage indicated that she was close to issuing a decision but wished to give the parties an opportunity to discuss resolution. The attorneys for the complainants and respondents planned to discuss the case. Another status conference was scheduled with Judge Savage on February 14; it was put on hold because Mrs. Gaffney was out of state. Counsel called complainant's attorney on 4/21. Counsel spoke to complainant's counsel in June, the parties were discussing offers. Counsel has called complainant's counsel in July and August. The complainant indicates that she and her attorney are developing an offer. Counsel and complainant's counsel played phone tag in late July and early August. The complainant reported that she and her counsel have been discussing a settlement proposal. On 11/17, 12/8 AND 12/14, I left a message for complainant's attorney to call me. On 12/14, I left a message for respondent's attorney to call me.

Hiroi v. Bodell, et al.

On April 13, 1996, complainants filed a charge of familial discrimination in the rental of housing. The respondents elected and a Superior Court case was brought on behalf of the complainants by the Attorney General's office. That case was ultimately dismissed for want of prosecution on April 15, 2004. On April 14, 2005, we became aware of the dismissal. A motion to re-instate the case was filed. Both the AG and the Hiroi family were notified. The hearing was scheduled for 5-17-05. The defendants filed objections to the motion to re-instate. Commission Counsel Gaschen was added as co-counsel with the Attorney General on the case. An attempt at settlement was made by our office. The motion to re-instate was denied. A motion to correct an order was filed. The motion was granted. Final Order and Judgment were filed and signed. Appeal perfected. Rule 12A statement filed. Mediation forms filed. Mediation scheduled for 1-11 at 11.

Joint v. DeMarkey and Rhode Island Commission for Human Rights

The individual respondent filed an appeal of the Commission Decision and Order. The Commission issued the decision on attorney's fees. The respondent filed an amended appeal to include its appeal of the Commission Decision on Attorney's Fees. The Commission filed the administrative record. The parties agreed to a

briefing schedule, Mr. Joint's brief was due June 1. The Commission brief and the complainant's brief were due 30 days after we received Mr. Joint's brief. Mr. Joint received an extension to file his brief; it was due June 30 and was filed in time. The Commission and the complainant asked to have an extension to file our briefs. The parties agreed that the time for filing these briefs was extended to August 31.

The Commission Brief was filed on August 30. The complainant's brief was filed at the end of September. The respondent's time to file a reply brief was extended to November 30, 2005. The respondent has requested one more extension and the Commission agreed.

King v. City of Providence Police Dept.

This is a case in which the Commission issued a decision finding that the City of Providence had denied Mr. King a position as a police officer because of his age. The Commission had not yet determined damages when the FUD's decision came down, so the Commission decision was not final and the respondent had the opportunity to have the case heard in Superior Court. The respondent elected to have the matter heard before the Superior Court. The complainant conducted a record deposition of Cynthia Hiatt on March 12. The respondent may schedule a further deposition of Ms. Hiatt. The parties have also deposed former Commission employee Nancy Kolman. Ms. Hiatt was under subpoena to testify at the trial, but the trial was postponed. At the last minute, the Judge agreed to hear complainant's motion for summary judgment, which argued that the Court should disallow respondent from having a hearing in court

because the hearing at the Commission was complete before the FUD's decision came down. The court denied the motion for summary judgment. The complainant had planned to appeal. Counsel for the complainant decided that he would not appeal and the trial date has been rescheduled.

Moore v. Tri-Way Security

Respondent has filed for bankruptcy. Outstanding is a motion for legal fees to complainant's attorney. We will prepare this ruling.

RICHR v Biernacki, et al.

The Commission filed suit to collect the judgment from the above case that was never paid. An additional claim was filed, alleging that the defendants had engaged in a fraudulent transfer of real property to avoid paying that judgment. A lis pendens was filed on the property. Motions to serve by special service were granted. The case was settled and the paperwork has been delivered to the Commission.

RICHR v. Engineered Technologies Corp.

Respondent petitioned into receivership. Commission will file petition to obtain permission from the Court to continue its investigation. Petition filed.

RICHR and Lovegrove v. Escolastico

A complaint for enforcement, together with a Request for Production and Request for Admissions, was filed on 3-24-05. Motions for extended time within which to serve and for special service were filed. The motions were granted. Defendant was served in Florida. Case ready to be defaulted. Hearing scheduled for January 4, 2006 on request for default judgment.

RICHR and Morin v. Teofilo Silva, et al.

A complaint for enforcement, together with a Request for Production and Request for Admissions, was filed on 3-24-05. Service of the complaint will be made once respondent can be located. Motions for extended time within which to serve and for special service were filed. The motions were granted. Service has not been perfected yet.

RICHR and Rossi v. Attruia

A complaint for enforcement, together with a Request for Production and Request for Admissions, was filed on 3-29-05. Hearing on May 17, 2005. Defendant was served and a hearing was held at which time the Court continued the matter to September to allow the respondent to speak to an attorney. Case continued by new judge an additional two months. Case continued again at request of defendant to January 4, 2006.

RICHR and Scurry v. C & H Investments, et al.

A complaint for enforcement, together with a Request for Production and Request for Admissions, was filed on 9-1-04. Defendants were served on 9-13-04. No answer was filed, the defendants defaulted and judgment entered. Counsel has spoken with an attorney to resolve this claim. The attorney does not represent the Costas but is a friend who was acting as a conduit for settlement negotiations. The offer was sent to the complainants, they rejected it. An Exemplified copy of the Judgment was obtained. Action will be brought against the respondents in Florida as they refuse to comply with the Decision. Further legal action is being taken to collect the judgment. A follow-up has been sent to the cooperating Attorney. Another follow-up sent.

RICHR and Solis v. Lombardo

The respondents filed an appeal of the Commission decision that found discrimination. The Commission filed the administrative record. The parties agreed on a briefing schedule. The respondents' appeal was dismissed for lack of action. A petition to enforce the Decision of the Commission was filed, answer for defendants filed and the matter was scheduled for hearing and then continued. The complainant was paid and we are in the process of negotiating resolution of relief to the Commission. A hearing was scheduled for May 17, 2005. The hearing was postponed to July 12 to allow us more

time to have the agreement signed by all parties. A follow-up has been sent to Attorney for respondents. We are conducting discovery on whether there is successor corporate liability on one of the respondents for the acts of one of the other respondents. Motions to compel discovery filed. Offer to settle was made to attorney for defendant who will get back to me.

RICHR and Zeigler v. Laura Sitrin, Finance Director of the City of Newport

The Commission found discrimination in 1988. The respondent filed an appeal but did not take action on the appeal. Since the court dismisses cases in which no action has been taken in five years, the appeal had been dismissed. The Petition for Enforcement was filed and discovery requests have been drafted. Service of suit was accepted by counsel for city. Answer filed. The matter was assigned to January 14, 2005. Negotiations with the city were ongoing to resolve its compliance with the Decision of the Commission. The complainant was paid. All remaining issues were apparently resolved in Court on 4-15-05, and the City had been ordered to conduct training. The respondent objected to the Order and we are going to schedule a hearing to determine if the City must conduct the training. Case scheduled for hearing on December 5th. Case continued to January 3, 2006.

RICHR v. Starnino

Action was commenced on this file, an enforcement action of a

negotiated settlement of a 1987 charge. An offer to compromise has been given to the respondent. Respondent has called me twice and will be meeting with his atty on 12-15. Case discussed with EEOC.

Schooner Cove Homeowners Association v. Dennis Malloy and the Rhode Island Commission for Human Rights

Schooner Cove Homeowners Association, the respondent in a housing case currently scheduled for hearing before the Commission, filed an amended complaint in Superior Court which added the Commission as a defendant. Schooner Cove sought a temporary restraining order (TRO) to stop the Commission hearing scheduled for December 15. At the TRO hearing, Judge Rubine appeared disinclined to stop the Commission hearing but he did express concerns about the Commission hearing Schooner Cove's motion to dismiss and then immediately proceeding to a hearing on the merits. The parties (including the Commission) agreed to a consent order stating that the Commission hearing would go forward on December 15 on the motion to dismiss only, that if the motion to dismiss was denied, the Commission would consult with the parties on the dates for rescheduling the hearing on the merits. The complainant, Dennis Malloy, has filed a motion to dismiss the court complaint that will be heard on January 17.

Tucker v. Blue Cross

The complainant filed an administrative appeal of the Commission's finding of no probable cause. The Commission had received stipulations extending the time in which it must file the record as the complainant had represented that the parties were discussing settlement. The Commission is currently seeking a stipulation on the record to be filed; two of the three attorneys have signed it and we are waiting for the third. Two reminders sent to the other attorney. The administrative record was filed in Court.